

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARCO INDUSTRIES, INC.,

1:08-cv-01999 PKC

Plaintiff,

**DECLARATION IN
RESPONSE TO
PLAINTIFF'S MOTION TO
AMEND THE COMPLAINT**

-against-

NEW YORK WINE CO., LLC, ROBERT ALLEN
and DERRICK MIZE,

Defendants.

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MICHAEL P. KANDLER, an attorney duly admitted to practice law in this Court and in the Courts of the State of New York, hereby affirms the truth of the following statements under the penalty of perjury:

1. I am a member of the firm of Callan, Koster, Brady & Brennan, attorneys for defendants New York Wine Co. LLC, Robert Allen and Derrick Mize (hereinafter, "defendants") in this action. As such, I am fully familiar with the facts and circumstances discussed in this declaration.

2. This declaration is submitted in response to plaintiff's motion to amend the complaint for injunctive relief to withdraw all claims for damages, costs of suit, and attorneys fees.

3. Defendants have no objection to plaintiff's motion to amend the complaint. Nor do defendants object to plaintiff's withdrawal of its demand for trial by jury.

4. However, defendants would suffer severe prejudice if claims for monetary relief are withdrawn at this juncture but later reasserted after discovery has been completed.

5. Therefore, to the extent this Court grants plaintiff's motion to amend the

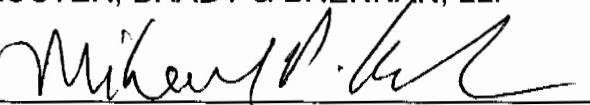
complaint, defendants respectfully request that the Order which grants such relief state that the plaintiff is precluded from reasserting its claims for monetary relief in the future.

Dated: New York, New York
June 20, 2008

Yours, etc.

CALLAN, KOSTER, BRADY & BRENNAN, LLP

By:


MICHAEL P. KANDLER (MPK 8683)

Attorneys for Defendants

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